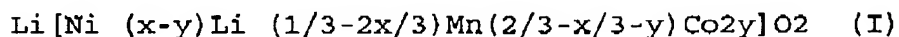


REMARKS

The claims of the application stand rejected as being unpatentable under 35 U.S.C. § 102 or 35 U.S.C. § 103(a). All of the rejections are based on Nakane, U.S. Patent Application Publication No. 2003/0180620 as the main reference.

Nakane discloses in paragraphs [0034] to [0036]:

[0034] The positive electrode active material for a non-aqueous secondary battery in this invention comprises a compound comprising lithium, nickel and manganese and having a layered structure. The compound is preferably one which is identified in X-ray diffraction as a compound represented by the composition formula



[0035] wherein  $0 < x \leq 0.5$ ,  $0 \leq y \leq 1/6$ ,  $x > y$ .

[0036] It is preferable that, in the composition formula (I),  $y$  is greater than 0, i.e., Co is contained because then the discharge capacity and the cycle characteristic at room temperature is improved. Further, it is preferable that, in the composition formula (I),  $x$  is

smaller than 0.5, i.e., Ni content is smaller than Mn content and Li is contained in the transition metal site, because then the cycle characteristic at high temperature is improved. When x decreases, discharge capacity tends to decrease, therefore  $0.4 < x < 0.5$  is preferable as the range of x, more preferably  $y > 0$  at the same time. The respective sites of lithium, nickel, manganese and cobalt may be replaced with Na, K, Mg, Ca, Sr, Ba, B, Al, Ga, In, Si, Zr, Sn, Ti, V, Cr, Fe, Cu, Ag, Zn, etc. within the range of not more than 50% by mole of the respective sites.

(Emphasis applicants').

Claims 1 and 3 have been amended to distinguish over the compound of Nakane by reciting the lithium transition metal complex oxide of the positive electrode of the nonaqueous electrolyte secondary battery of the present invention, which contains at least Ni and Mn as transition metals and having a layered structure, as comprising, in addition to said at least Ni and Mn, zirconium in the amount by mole of from 0.1 % to 5 %, based on the total amount of said transition metals. This amendment ensures a distinction over the compound of Nakane in which, as can be understood from the description quoted above, the respective sites of lithium, nickel,

manganese and cobalt may be replaced with 20 possible elements including Zr.

In the present invention, the sites of nickel, manganese or cobalt of the lithium transition metal complex oxide are not replaced with Zr. This fact can be understood from the chemical formula:  $\text{Li}_a\text{Mn}_x\text{Ni}_y\text{Co}_z\text{O}_2$  of the lithium transition metal complex oxide of the positive electrode of the battery of the present invention, where a, x, y and z satisfy  $0 \leq a \leq 1.2$ ,  $x + y + z = 1$ ,  $0 < x \leq 0.5$ ,  $0 < y \leq 0.5$  and  $z \geq 0$ . (See claims 6 and 10). This fact can also can be understood from the description in Example 1, paragraph [0035], of the specification of the present application, that the lithium transition metal complex oxide "contained a lithium transition metal complex oxide represented by  $\text{LiMn}_{0.33}\text{Ni}_{0.33}\text{Co}_{0.34}\text{O}_2$  and having a mean particle diameter of about 10  $\mu\text{m}$  and also contained zirconium".

Nakane, therefore, cannot support a rejection of the claims under either 35 U.S.C. § 102 or 35 U.S.C. § 103(a) and removal of the rejections of the claims of the application is in order.

It is noted that new claims 13-16, which depend on claims 1, 6, 3 and 10, respectively, and limit the amount of zirconium to the amount by mole of from 0.1 % to 1 %, based on the total amount of said transition metals, have been added to the application. The

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upper limit of 1 % is supported in Examples 2, 4 and 5 of the present application.

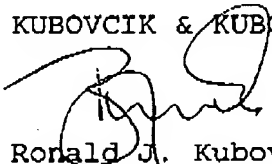
The foregoing is believed to be a complete and proper response to the Office Action dated August 8, 2008.

In the event that this paper is not considered to be timely filed, applicants hereby petition for an appropriate extension of time. The fee for any such extension may be charged to our Deposit Account No. 111833.

In the event any additional fees are required, please also charge our Deposit Account No. 111833.

Respectfully submitted,

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